

By: Carona
(Keffner)

S.B. No. 385

Substitute the following for S.B. No. 385:

By: Craddick

C.S.S.B. No. 385

A BILL TO BE ENTITLED

AN ACT

relating to authorizing assessments for water and energy improvements in regions designated by municipalities and counties; imposing a fee.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle C, Title 12, Local Government Code, is amended by adding Chapter 399 to read as follows:

CHAPTER 399. MUNICIPAL AND COUNTY WATER AND ENERGY IMPROVEMENT

REGIONS

Sec. 399.001. SHORT TITLE. This chapter may be cited as the Property Assessed Clean Energy Act.

Sec. 399.002. DEFINITIONS. In this chapter:

(1) "Local government" means a municipality or county.

(2) "Program" means a program established under this chapter.

(3) "Qualified improvement" means a permanent improvement fixed to real property and intended to decrease water or energy consumption or demand, including a product, device, or interacting group of products or devices on the customer's side of the meter that uses energy technology to generate electricity, provide thermal energy, or regulate temperature.

(4) "Qualified project" means the installation or modification of a qualified improvement.

(5) "Real property" means privately owned commercial

1 or industrial real property or residential real property with five
2 or more dwelling units.

3 (6) "Region" means a region designated under this
4 chapter.

5 Sec. 399.003. EXERCISE OF POWERS. In addition to the
6 authority provided by Chapter 376 for municipalities, the governing
7 body of a local government that establishes a program in accordance
8 with the requirements provided by Section 399.008 may exercise
9 powers granted under this chapter.

10 Sec. 399.004. AUTHORIZED ASSESSMENTS. (a) An assessment
11 under this chapter may be imposed to repay the financing of
12 qualified projects on real property located in a region designated
13 under this chapter.

14 (b) An assessment under this chapter may not be imposed to
15 repay the financing of:

16 (1) facilities for undeveloped lots or lots undergoing
17 development at the time of the assessment; or

18 (2) the purchase or installation of products or
19 devices not permanently fixed to real property.

20 Sec. 399.005. WRITTEN CONTRACT FOR ASSESSMENT REQUIRED. A
21 local government may impose an assessment under this chapter only
22 under a written contract with the record owner of the real property
23 to be assessed.

24 Sec. 399.006. ESTABLISHMENT OF PROGRAM. (a) The governing
25 body of a local government may determine that it is convenient and
26 advantageous to establish a program under this chapter.

27 (b) An authorized official of the local government that

1 establishes a program may enter into a written contract with a
2 record owner of real property in a region designated under this
3 chapter to impose an assessment to repay the owner's financing of a
4 qualified project on the owner's property. The financing to be
5 repaid through assessments may be provided by a third party or, if
6 authorized by the program, by the local government.

7 (c) If the program provides for third-party financing, the
8 authorized official of the local government that enters into a
9 written contract with a property owner under Subsection (b) must
10 also enter into a written contract with the party that provides
11 financing for a qualified project under the program to service the
12 debt through assessments.

13 (d) If the program provides for local government financing,
14 the written contract described by Subsection (b) must be a contract
15 to finance the qualified project through assessments.

16 (e) The financing for which assessments are imposed may
17 include:

18 (1) the cost of materials and labor necessary for
19 installation or modification of a qualified improvement;

20 (2) permit fees;

21 (3) inspection fees;

22 (4) lender's fees;

23 (5) program application and administrative fees;

24 (6) project development and engineering fees;

25 (7) third-party review fees, including verification
26 review fees, under Section 399.011; and

27 (8) any other fees or costs that may be incurred by the

1 property owner incident to the installation, modification, or
2 improvement on a specific or pro rata basis, as determined by the
3 local government.

4 Sec. 399.007. DESIGNATION OF REGION. (a) The governing
5 body of a local government may determine that it is convenient and
6 advantageous to designate an area of the local government as a
7 region within which authorized local government officials and
8 record owners of real property may enter into written contracts to
9 impose assessments to repay the financing by owners of qualified
10 projects on the owners' property and, if authorized by the local
11 government program, finance the qualified project.

12 (b) An area designated as a region by the governing body of a
13 local government under this section:

14 (1) may include the entire local government; and
15 (2) must be located wholly within the local
16 government's jurisdiction.

17 (c) For purposes of determining a municipality's
18 jurisdiction under Subsection (b)(2), the municipality's
19 extraterritorial jurisdiction may be included.

20 (d) A local government may designate more than one region.
21 If multiple regions are designated, the regions may be separate,
22 overlapping, or coterminous.

23 Sec. 399.008. PROCEDURE FOR ESTABLISHMENT OF PROGRAM. (a)
24 To establish a program under this chapter, the governing body of a
25 local government must take the following actions in the following
26 order:

27 (1) adopt a resolution of intent that includes:

1 (A) a finding that, if appropriate, financing
2 qualified projects through contractual assessments is a valid
3 public purpose;

4 (B) a statement that the local government intends
5 to make contractual assessments to repay financing for qualified
6 projects available to property owners;

7 (C) a description of the types of qualified
8 projects that may be subject to contractual assessments;

9 (D) a description of the boundaries of the
10 region;

11 (E) a description of any proposed arrangements
12 for third-party financing to be available or any local government
13 financing to be provided for qualified projects;

14 (F) a description of local government debt
15 servicing procedures if third-party financing will be provided and
16 assessments will be collected to service a third-party debt;

17 (G) a reference to the report on the proposed
18 program prepared as provided by Section 399.009 and a statement
19 identifying the location where the report is available for public
20 inspection;

21 (H) a statement of the time and place for a public
22 hearing on the proposed program; and

23 (I) a statement identifying the appropriate
24 local official and the appropriate assessor-collector for purposes
25 of consulting regarding collecting the proposed contractual
26 assessments with property taxes imposed on the assessed property;

27 (2) hold a public hearing at which the public may

comment on the proposed program, including the report required by
Section 399.009; and

(3) adopt a resolution establishing the program and
the terms of the program, including:

(A) each item included in the report under
Section 399.009; and

(B) a description of each aspect of the program
that may be amended only after another public hearing is held.

(b) For purposes of Subsection (a)(3)(A), the resolution
may incorporate the report or the amended version of the report, as
appropriate, by reference.

(c) Subject to the terms of the resolution establishing the
program as referenced by Subsection (a)(3)(B), the governing body
of a local government may amend a program by resolution.

(d) A local government may:

(1) hire and set the compensation of a program
administrator and program staff; or

(2) contract for professional services necessary to
administer a program.

(e) A local government may impose fees to offset the costs
of administering a program. The fees authorized by this subsection
may be assessed as:

(1) a program application fee paid by the property
owner requesting to participate in the program;

(2) a component of the interest rate on the assessment
in the written contract between the local government and the
property owner; or

1 (3) a combination of Subdivisions (1) and (2).

2 Sec. 399.009. REPORT REGARDING ASSESSMENT. (a) The report
3 for a proposed program required by Section 399.008 must include:

4 (1) a map showing the boundaries of the proposed
5 region;

6 (2) a form contract between the local government and
7 the property owner specifying the terms of:

8 (A) assessment under the program; and

9 (B) financing provided by a third party or the
10 local government, as appropriate;

11 (3) if the proposed program provides for third-party
12 financing, a form contract between the local government and the
13 third party regarding the servicing of the debt through
14 assessments;

15 (4) a description of types of qualified projects that
16 may be subject to contractual assessments;

17 (5) a statement identifying a local government
18 official authorized to enter into written contracts on behalf of
19 the local government;

20 (6) a plan for ensuring sufficient capital for
21 third-party financing and, if appropriate, raising capital for
22 local government financing for qualified projects;

23 (7) if bonds will be issued to provide capital to
24 finance qualified projects as part of the program as provided by
25 Section 399.016:

26 (A) a maximum aggregate annual dollar amount for
27 financing through contractual assessments to be provided by the

1 local government under the program;

2 (B) a method for ranking requests from property
3 owners for financing through contractual assessments in priority
4 order if requests appear likely to exceed the authorization amount;
5 and

6 (C) a method for determining:

7 (i) the interest rate and period during
8 which contracting owners would pay an assessment; and

9 (ii) the maximum amount of an assessment;

10 (8) a method for ensuring that the period of the
11 contractual assessment does not exceed the useful life of the
12 qualified project that is the basis for the assessment;

13 (9) a description of the application process and
14 eligibility requirements for financing qualified projects to be
15 repaid through contractual assessments under the program;

16 (10) a method as prescribed by Subsection (b) for
17 ensuring that property owners requesting to participate in the
18 program demonstrate the financial ability to fulfill financial
19 obligations to be repaid through contractual assessments;

20 (11) a statement explaining the manner in which
21 property will be assessed and assessments will be collected;

22 (12) a statement explaining the lender notice
23 requirement provided by Section 399.010;

24 (13) a statement explaining the review requirement
25 provided by Section 399.011;

26 (14) a description of marketing and participant
27 education services to be provided for the program;

1 (15) a description of quality assurance and antifraud
2 measures to be instituted for the program; and

3 (16) the procedures for collecting the proposed
4 contractual assessments.

5 (b) The method for ensuring a demonstration of financial
6 ability under Subsection (a)(10) must be based on appropriate
7 underwriting factors, including:

8 (1) providing for verification that:

9 (A) the property owner requesting to participate
10 under the program:

11 (i) is the legal owner of the benefited
12 property;

13 (ii) is current on mortgage and property
14 tax payments; and

15 (iii) is not insolvent or in bankruptcy
16 proceedings; and

17 (B) the title of the benefited property is not in
18 dispute; and

19 (2) requiring an appropriate ratio of the amount of
20 the assessment to the assessed value of the property.

21 (c) The local government shall make the report available for
22 public inspection:

23 (1) on the local government's Internet website; and

24 (2) at the office of the official designated to enter
25 into written contracts on behalf of the local government under the
26 program.

27 Sec. 399.010. NOTICE TO MORTGAGE HOLDER REQUIRED FOR

1 PARTICIPATION. Before a local government may enter into a written
2 contract with a record owner of real property to impose an
3 assessment to repay the financing of a qualified project under this
4 chapter:

5 (1) the holder of any mortgage lien on the property
6 must be given written notice of the owner's intention to
7 participate in a program under this chapter on or before the 30th
8 day before the date the written contract for assessment between the
9 owner and the local government is executed; and

10 (2) a written consent from the holder of the mortgage
11 lien on the property must be obtained.

12 Sec. 399.011. REVIEW REQUIRED. (a) A program established
13 under this chapter must require for each proposed qualified project
14 a review of water or energy baseline conditions and the projected
15 water or energy savings to establish the projected water or energy
16 savings.

17 (b) After a qualified project is completed, the local
18 government shall obtain verification that the qualified project was
19 properly completed and is operating as intended.

20 (c) A baseline water or energy review or verification review
21 under this section must be conducted by an independent third party.

22 Sec. 399.012. DIRECT ACQUISITION BY OWNER. The proposed
23 arrangements for financing a qualified project may authorize the
24 property owner to:

25 (1) purchase directly the related equipment and
26 materials for the installation or modification of a qualified
27 improvement; and

1 (2) contract directly, including through lease, power
2 purchase agreement, or other service contract, for the installation
3 or modification of a qualified improvement.

4 Sec. 399.013. RECORDING OF NOTICE OF CONTRACTUAL ASSESSMENT
5 REQUIRED. (a) A local government that authorizes financing
6 through contractual assessments under this chapter shall file
7 written notice of each contractual assessment in the real property
8 records of the county in which the property is located.

9 (b) The notice under Subsection (a) must contain:

10 (1) the amount of the assessment;
11 (2) the legal description of the property;
12 (3) the name of each property owner; and
13 (4) a reference to the statutory assessment lien
14 provided under this chapter.

15 Sec. 399.014. LIEN. (a) A contractual assessment under
16 this chapter and any interest or penalties on the assessment:

17 (1) is a first and prior lien against the real property
18 on which the assessment is imposed from the date on which the notice
19 of contractual assessment is recorded as provided by Section
20 399.013 and until the assessment, interest, or penalty is paid; and

21 (2) has the same priority status as a lien for any
22 other ad valorem tax.

23 (b) The lien runs with the land, and that portion of the
24 assessment under the assessment contract that has not yet become
25 due is not eliminated by foreclosure of a property tax lien.

26 (c) The assessment lien may be enforced by the local
27 government in the same manner that a property tax lien against real

1 property may be enforced by the local government to the extent the
2 enforcement is consistent with Section 50, Article XVI, Texas
3 Constitution.

4 (d) Delinquent installments of the assessments incur
5 interest and penalties in the same manner as delinquent property
6 taxes.

7 (e) A local government may recover costs and expenses,
8 including attorney's fees, in a suit to collect a delinquent
9 installment of an assessment in the same manner as in a suit to
10 collect a delinquent property tax.

11 Sec. 399.015. COLLECTION OF ASSESSMENTS. The governing
12 body of a local government may contract with the governing body of
13 another taxing unit, as defined by Section 1.04, Tax Code, or
14 another entity, including a county assessor-collector, to perform
15 the duties of the local government relating to collection of
16 assessments imposed by the local government under this chapter.

17 Sec. 399.016. BONDS OR NOTES. (a) A local government may
18 issue bonds or notes to finance qualified projects through
19 contractual assessments under this chapter.

20 (b) Bonds or notes issued under this section may not be
21 general obligations of the local government. The bonds or notes
22 must be secured by one or more of the following as provided by the
23 governing body of the local government in the resolution or
24 ordinance approving the bonds or notes:

25 (1) payments of contractual assessments on benefited
26 property in one or more specified regions designated under this
27 chapter;

1 (2) reserves established by the local government from
2 grants, bonds, or net proceeds or other lawfully available funds;

3 (3) municipal bond insurance, lines of credit, public
4 or private guaranties, standby bond purchase agreements,
5 collateral assignments, mortgages, or any other available means of
6 providing credit support or liquidity; and

7 (4) any other funds lawfully available for purposes
8 consistent with this chapter.

9 (c) A local government pledge of assessments, funds, or
10 contractual rights in connection with the issuance of bonds or
11 notes by the local government under this chapter is a first lien on
12 the assessments, funds, or contractual rights pledged in favor of
13 the person to whom the pledge is given, without further action by
14 the local government. The lien is valid and binding against any
15 other person, with or without notice.

16 (d) Bonds or notes issued under this chapter further an
17 essential public and governmental purpose, including:

18 (1) improvement of the reliability of the state
19 electrical system;

20 (2) conservation of state water resources consistent
21 with the state water plan;

22 (3) reduction of energy costs;

23 (4) economic stimulation and development;

24 (5) enhancement of property values;

25 (6) enhancement of employment opportunities; and

26 (7) reduction in greenhouse gas emissions.

27 Sec. 399.017. JOINT IMPLEMENTATION. (a) Any combination

1 of local governments may agree to jointly implement or administer a
2 program under this chapter.

3 (b) If two or more local governments implement a program
4 jointly, a single public hearing held jointly by the cooperating
5 local governments is sufficient to satisfy the requirement of
6 Section 399.008(a)(2).

7 (c) One or more local governments may contract with a third
8 party, including another local government, to administer a program.

9 Sec. 399.018. PROHIBITED ACTS. A local government that
10 establishes a region under this chapter may not:

11 (1) make the issuance of a permit, license, or other
12 authorization from the local government to a person who owns
13 property in the region contingent on the person entering into a
14 written contract to repay the financing of a qualified project
15 through contractual assessments under this chapter; or

16 (2) otherwise compel a person who owns property in the
17 region to enter into a written contract to repay the financing of a
18 qualified project through contractual assessments under this
19 chapter.

20 SECTION 2. This Act takes effect immediately if it receives
21 a vote of two-thirds of all the members elected to each house, as
22 provided by Section 39, Article III, Texas Constitution. If this
23 Act does not receive the vote necessary for immediate effect, this
24 Act takes effect September 1, 2013.